

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Building Code Appeals Board
Docket No. 10-874

Ben Pinkowitz,
Appellant
v.
Town of Freetown,
Appellee

BOARD'S RULING ON APPEAL

Introduction

This matter came before the State Building Code Appeals Board ("Board") on Appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the Appellant petitioned the Board to interpret/vary decisions made by the Town of Freetown Inspector of Buildings based on the Seventh Edition of the Massachusetts State Building Code ("Code") so that an Occupancy Permit can be issued for the subject building.

A Hearing relative to the appeal was convened on May 6, 2010. The Appellant represented himself in his appeal. The Town was represented by the Inspector of Buildings, Paul Bourgeois. All witnesses were duly sworn. This Appeal sought resolve against alleged inaction and, additionally, interpretation of when a Certificate of Occupancy is required. For the following reasons, it is concluded that the matter of failure to act has been resolved as the Appellant and Appellee anticipate a final inspection of the subject property within approximately one week of the closing of this Appeal Hearing. On the matter of whether a Certificate of Occupancy is required for the building permissible work proposed for the building of interest, the Appeals Board found that the Building Official was within his rights to interpret the language of the 7th Edition of 780 CMR, Section 120.2 in the manner in which he has and that on such basis a Certificate of Occupancy would be required for the subject property.

Appeals Board member T Riley disclosed that he had advised the Appellant to file with the Appeals Board but otherwise knew little of the subject Appeal Case and asked if either the Appellant or Appellee wished that T Riley recuse himself but both parties agreed to let T Riley sit as an Appeals Board member in this Case.

Exhibits

The following Exhibits were entered into evidence at the hearing on this matter without objection and reviewed by the Board:

Exhibit 1: State Building Code Appeals Board appeal application form with numerous attachments, dated April 15, 2010.

Findings of Fact

The Board bases the following findings upon the exhibits identified above and the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The Appellant filed for and ultimately received a building permit for alteration of the building at interest on September 17, 2009.
2. The Appellant undertook alteration of the subject building upon receipt of the building permit.
3. On March 3, 2010, the Appellee posted a Stop Work Order on the subject building for failure to request certain inspections or obtain an Occupancy Permit.
4. The Appellant filed for Building Code Appeal in these matters on April 15, 2010 seeking relief via interpretation of requirements relative to the Certificate of Occupancy and also seeking closing out of the permit (essentially lifting of the Stop Work Order).
5. The Building Code Appeal Hearing was held on May 6, 2010 in Taunton, Massachusetts.

Code Analysis

The Appellant alleged a failure to act on the part of the Building Official and seeks overturning of a Stop Work Order; the Appellant additionally argued that a formal Certificate of Occupancy is not required issued for the subject project work at the building at interest.

The Appellee noted that it was his policy that should a building permissible project be appealed to a Building Code Appeals Board, he would cease action of any kind, including final inspection, until such matter was presented and resolved at the Appeals Board Hearing (this approach, in part, was viewed by the Board of Appeals as explaining why an final inspection of the property had not taken place).

On the matter of whether a Certificate of Occupancy was required for the building permissible work described at the property at interest, the Appellee likewise requested this matter be ruled on by the Appeals Board.

The building at interest is an existing S-1 USE w/no USE Change argued occurring, although office space is being created and other tenant fit-up required / A building permit for the intended work was issued on September 17, 2009. The Appellant, via information filed and testimony provided, noted that he believed he has complied with all "Construction Control" documentation, with reports filed to the Building Department and seeks release of the Stop Work order and further seeks to close out the building permit.

The Appellee, via information filed and testimony provided, noted that the subject site contains a number of buildings in which, over the past years, numerous businesses have appeared w/o proper permitting and that relative to the building at interest, noted he had advised the building "owner" that an Occupancy Permit would be required before occupying the updated portions of the building; he further noted that certain inspections were not called for and recently observed the building has been occupied without a final inspection and Certificate of Occupancy issued and on such bases, issued the resulting Stop Work order and requires that a final inspection be performed and only after a satisfactory final inspection would a Certificate of Occupancy be issued.

For the subject building, and narrow to inspection requirements and Certificate of Occupancy requirements, the present 7th Edition Base Code, Sections 110, 111, and 120, at the minimum, are applicable.

Of particular interest are the requirements of Section 120.2, titled "Buildings or Structures Hereafter Altered", which in part, reads: *"A building...in whole or in part, altered...to a different use...or the occupancy load capacity (affected)...shall not be occupied or used until the certificate (of occupancy) shall have been issued certifying that the work has been completed in accordance with the provisions of the approved permits..."*

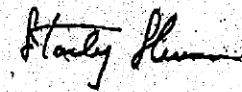
Conclusion

There was a motion recognizing that the inaction of the Building Official, in this instance, was, in part due to the Building Official's policy of taking no further action regarding a Building Code matter once a Building Code Appeal had been filed and ultimately adjudicated.

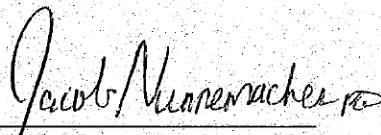
The Building Official and the Appellant agreed on the record that a final inspection of the subject building could take place within the following week after the Appeal Hearing and therefore the matter of failure to act was viewed by this Appeals Board as moot and resolved.

On the matter of whether or not a Certificate of Occupancy was required for the subject work, a Motion was made and seconded that the Building Official was within his right to interpret and enforce requirements of the 7th Edition of 780 CMR, Chapter 1, Section 120.2 and that a Certificate of Occupancy would be required issued.

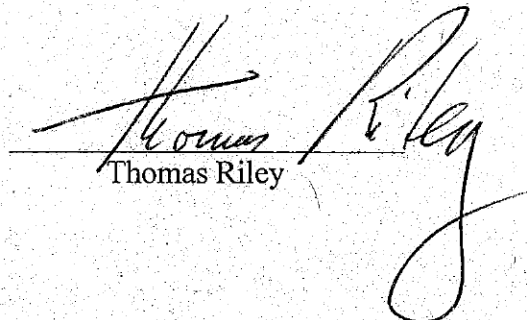
SO ORDERED.



Stanley Shuman



Jacob Nunnemacher - Chairman



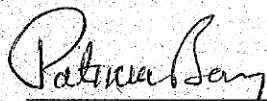
Thomas Riley

DATED: May 18, 2010

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: May 18, 2010



Patricia Barry, Clerk